

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

MICHAEL F. DUGE, SR.,
Plaintiff,

v.

SEARS, ROEBUCK AND
COMPANY,
Defendant

§
§
§
§
§
§
§
§

Civil Action No. 6:16-cv-114
JURY DEMANDED

COMPLAINT

Plaintiff Michael F. Duge, Sr. complains of Sears, Roebuck and Company, and for causes of action states:

Parties

1. Michael F. Duge, Sr. is a resident of McLennan County, Texas.
2. Sears, Roebuck and Company (“Sears”) is a Delaware corporation. Its principal place of business in Hoffman Estates, Illinois. Sears may be served with process by serving its registered agent for service of process in Texas, CT Corp System, 1999 Bryan St., Ste. 900, Dallas, TX 75201-3136.

Jurisdiction and Venue

3. This court has jurisdiction over the federal claims asserted herein pursuant to 28 U.S.C. § 1331, and supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

Exhaustion of Administrative Remedies

5. Plaintiff timely filed a Charge of Discrimination with the Equal Employment Opportunity Commission and the Texas Commission on Human Rights, Civil Rights Division. More than 60 days have passed since this charge was filed. A true and correct copy of the Charge of Discrimination is attached as Exhibit A.

Relevant Facts

6. Sears operates retail stores nationwide, including store number 01367 located at 6001 W. Waco Dr., Waco, Texas 76710.

7. Duge was an employee at Sears store 01367 from 1989 until he was terminated as of August 3, 2013.

8. Duge's immediate supervisor, store manager Jason Jungmann, told Duge his position was being eliminated, but Duge had reason to believe he was terminated because of his age. On January 21, 2014 Duge filed an EEOC Charge of Discrimination (No. 450-2014-01127) alleging age discrimination by Sears, and on November 15, 2014 he filed a lawsuit against Sears in this Court for age discrimination.

9. On January 9, 2015, Duge saw a job posted on the Sears website (requisition no. 428363BR, Merchandising and Pricing Lead) that appeared to be his former position – the one that had allegedly been eliminated. Duge applied for the job. He later called to check on the status of his application and the call was transferred to Jungmann, his old boss. Jungmann told Duge that due to the company restructuring and the pending lawsuit he was not able to discuss the matter with Duge.

10. After this phone call, Sears removed the job posting from its website. But soon after that, Sears re-posted the exact same job with a new requisition number (438041BR).

11. On January 29, 2015 Duge applied for three other open positions at the store he used to work in. Duge was interviewed for one of the positions, but he never heard from Sears about that position or any of the others he applied for. The Sears website later changed to show that Duge was no longer being considered for any of the positions, even though all three remained on the website as open positions.

12. Sears hired a much younger and less qualified male applicant for the Merchandising and Pricing Lead position.

Causes of Action for Age Discrimination and Retaliation

13. Plaintiff engaged in protected activities when he filed his Charge of Discrimination and his Complaint.

14. Sears then discriminated against Duge because of his age and retaliated against Duge because of his protected activities by refusing to consider him and refusing to hire him for the jobs he later applied for even though he was better qualified than the much younger applicants who were hired for the positions.

15. Regarding the Merchandising and Pricing Lead position (Plaintiff's old job) Plaintiff had the necessary experience and qualification for the position, but Sears selected a 24-year old with far less management experience and inferior qualifications to fill the position. Sears did so as retaliation against Duge because he had complained, and because Sears wanted a younger employee in the position.

16. Regarding the other positions Duge applied for, Sears likewise hired younger employees with less experience and inferior qualifications.

17. This age discrimination and retaliation by Sears was in violation of both state and federal age discrimination laws, and such discrimination and retaliation has caused Duge actual

damages in the form of lost income and benefits of employment, and other compensatory damages.

18. This age discrimination and retaliation by Sears was motivated by and accompanied by malice or reckless indifference to Duge's federally protected rights. Duge therefore seeks recovery of punitive damages against Sears to punish its wrongdoing and to serve as a deterrent to others.

Arbitration

19. Defendant is likely to assert that Plaintiff agreed to arbitrate his claims, but Plaintiff denies that he ever entered into the agreement relied upon by Defendant.

Jury Demand

20. Plaintiff requests a trial by jury. Should Defendant move to compel arbitration, Plaintiff requests a jury trial pursuant to 9 U.S.C. § 4 to determine whether the parties entered into a binding agreement requiring arbitration of the claims being asserted herein.

Prayer for Relief

WHEREFORE, Plaintiff requests judgment against Sears awarding all damages and remedies to which he may be justly entitled, including lost wages and benefits, liquidated damages, compensatory damages, punitive damages, declaratory and injunctive relief, reasonable attorney fees and all applicable expert witness fees, costs of the action, pre-judgment and post-judgment interest at the highest rates allowed by applicable law, plus all other relief to which he may show himself to be justly entitled.

Respectfully submitted,

/s/ Donald E. Uloth
Donald E. Uloth
Texas Bar No. 20374200
Donald E. Uloth, P.C.
18208 Preston Road, Suite D-9 # 261
Dallas, Texas 75252
Phone: (214) 725-0260
Fax: (866) 462-6179
don.uloth@uloth.pro
Counsel for Plaintiff